

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

RONALD BUZZARD, JR.,

Petitioner,

v.

DARREN SWENSON,

Respondent.

CASE NO. C06-1653JLR

ORDER

This matter comes before the court on Mr. Buzzard's motion for a certificate of appealability under 28 U.S.C. § 2253(c) (Dkt. # 55). Mr. Buzzard seeks to appeal the court's November 16, 2007 order denying his 28 U.S.C. § 2254 habeas corpus petition (Dkt. # 4). For the reasons stated below, the court DENIES the motion.

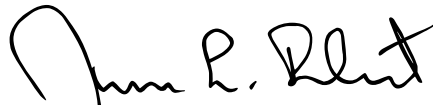
Among the substantial changes to federal habeas corpus procedure in the Antiterrorism and Effective Death Penalty Act of 1996 is a rule that a habeas petitioner can appeal the denial of a 28 U.S.C. § 2254 petition only after obtaining a "certificate of appealability." 28 U.S.C. § 2253(c). Although the statute is ambiguous, the Ninth Circuit has held that a United States District Court may issue a certificate of appealability. *United States v. Asrar*, 116 F.3d 1268, 1269 (9th Cir. 1997). A court may issue a certificate of appealability only if the "applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The Supreme Court has

1 elaborated that a petitioner must show that “reasonable jurists could debate whether . . .  
2 the petition should have been resolved in a different manner or that the issues presented  
3 were adequate to deserve encouragement to proceed further.” *Slack v. McDaniel*, 529  
4 U.S. 473, 484 (2000) (quotation marks and citation omitted).

5 Here, Mr. Buzzard has not made a substantial showing of the denial of a  
6 constitutional right. The court dismissed Mr. Buzzard’s petition for writ of habeas corpus  
7 without prejudice for failure to comply with the court’s third order directing Mr. Buzzard  
8 to file a concise statement of facts and law. In the court’s view, this decision does not  
9 rise to the level of a denial of a constitutional right.  
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11 DATED this 3rd day of January, 2008.

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JAMES L. ROBART  
United States District Judge